

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 15, 2003

**JASON EUGENE MIZE v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Davidson County**  
**No. 03C-531     Hamilton V. Gayden, Judge**

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**No. M2003-00986-CCA-R3-CD - Filed December 18, 2003**

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The Appellant, Jason Eugene Mize, proceeding *pro se*, appeals the summary dismissal of his petition for writ of habeas corpus, which alleges that his effective eight-year sentence is illegal. The trial court, acting pursuant to Tennessee Code Annotated § 41-21-807 (2003), ordered Mize to make a partial payment of the filing fee within twenty days and dismissed the petition when Mize failed to do so. Because Mize did not have sufficient funds in his prison trust fund account to make a partial payment of the filing fee, we conclude that the trial court erred by dismissing his petition. Accordingly, the judgment of the Davidson County Criminal Court is reversed and remanded for further proceedings consistent with this opinion.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Reversed and Remanded.**

DAVID G. HAYES, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Jason Eugene Mize, *Pro Se*, Pikeville, Tennessee.

Paul G. Summers, Attorney General and Reporter; Michael Moore, Solicitor General; Kathy D. Aslinger, Assistant Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**Factual Background**

On February 7, 1997, the Appellant pled guilty to aggravated robbery in Union County and received an eight-year sentence. The judgment form indicates that this sentence was to be served concurrently with “Knox and Anderson County cases.” In Anderson County on August 22, 1997, the Appellant pled guilty to two counts of aggravated robbery and received concurrent eight-year sentences on each count. The Anderson County judgment form contains the notation, “This sentence may run concurrent with defendant’s Knox County sentence if legally possible.” According to the

Appellant's brief, judgment was imposed in Knox County on June 3, 1998; however, the record does not indicate what the conviction was for, the length of sentence, or manner of service.

On September 11, 2002, the Appellant, proceeding *pro se*, filed two petitions<sup>1</sup> for writ of habeas corpus in the Morgan County Circuit Court, which challenged his Union and Anderson County sentences. He alleged that his sentences were illegal because the trial courts lacked authority to order his sentences to be served concurrently with sentences he may or may not receive in the future. On January 21, 2003, the Morgan County Circuit Court, upon its own motion, transferred the case to Davidson County because the Appellant had been transferred from the facility in Morgan County to Riverbend Maximum Security Institution in Nashville.

On February 28, 2003, the Davidson County Criminal Court ordered the Appellant to file a pauper's oath and to make a partial payment of the \$37.50 filing fee within twenty days as required by Tennessee Code Annotated § 41-21-807 (2003). On March 17, 2003, the Appellant filed a document titled, "Petitioner's Request that the Court Take Judicial Notice of Case History and Current Status of Petition for Writ of Habeas Corpus." In that document, the Appellant indicated that he had filed an affidavit of indigency, but the affidavit apparently was not part of the transfer from Morgan County. He included a new affidavit of indigency and stated that he had no funds in his inmate trust account, as he was a maximum security prisoner and "could not work in prison to get income." Thereafter, on March 28, 2003, the trial court dismissed the petition because the Appellant had failed "to file the partial payment of the filing fee as required by T.C.A. 41-21-807." The Appellant now appeals this ruling.

## ANALYSIS

Article I, § 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief and Tennessee Code Annotated §§ 29-21-101 to -130 (2003) codifies the applicable procedures for seeking a writ. However, the grounds upon which our law provides relief are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). Habeas corpus relief is available in Tennessee only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that (1) the convicting court was without jurisdiction or authority to sentence a defendant or (2) a defendant's sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

Persons commencing a civil action in Tennessee's courts must pay an initial filing fee. Indigent persons are not excused from paying the initial filing fees required by Tennessee Code Annotated § 8-21-401(a) (2003). Because of the dramatic increase in the number of *pro se* civil proceedings being commenced by state prisoners,<sup>2</sup> the Tennessee General Assembly enacted section 41-21-807 in 1996 to provide an orderly procedure for collecting the required filing fee from

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<sup>1</sup>It appears from the record that these two petitions were considered as one petition for habeas corpus relief.

<sup>2</sup>The purpose of Tennessee Code Annotated § 41-21-807 was "to address the problems that arise when state courts are confronted by a flood of taxpayer-funded inmate lawsuits." *William Allen, et al. v. William Lloyd*, No. M1999-01739-COA-R3-CV (Tenn. Ct. App. June 16, 2000).

prisoners who file civil suits in state court. Tennessee Code Annotated § 41-21-807(a) requires prisoners to file certified copies of their trust fund account statements for the six months immediately preceding the filing of the complaint. In addition, Tennessee Code Annotated § 41-21-807(b) provides:

(1) If an inmate brings a civil action or files an appeal in forma pauperis, the inmate shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect as a partial payment of any court fees required by law, an initial partial filing fee of twenty percent (20%) of the greater of the average monthly:

(A) Deposits to the inmate's account; or

(B) Balance in the inmate's account for the six-month period immediately preceding the filing of the complaint or notice of appeal.

...

(4) In no event shall an inmate be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the inmate has no assets and no means by which to pay the initial partial filing fee.

On August 29, 2002, the Appellant's balance in his prison trust fund account was \$0.00. The average balance in his account for the six immediately preceding months was \$0.00. Accordingly, the Appellant did not have sufficient funds to make the partial payment required by Tennessee Code Annotated § 41-21-807(b)(1). Accordingly, we conclude that the trial court erred by dismissing the Appellant's petition for habeas corpus relief for failure "to file the partial payment of the filing fee." The Appellant may not be prevented from proceeding with his petition for habeas corpus relief because he is unable to pay the initial partial filing fee.

While the State concedes that the Appellant's argument relating to payment of the filing fee is correct, the State contends that "remanding this case to the trial court would be an exercise in futility, as the [Appellant] has failed to establish a claim for habeas corpus relief. Therefore, this Court should affirm the dismissal of the petitions." However, the Appellant is entitled to a hearing to determine whether he has alleged sufficient facts that entitle him to relief. *See* Tenn. Code. Ann. § 29-21-108 to -110 (2003). This court does not possess fact finding authority; our jurisdiction being appellate only. Tenn. Code Ann. § 16-5-108 (1994); *see also* Tenn. Code Ann. § 29-21-127 (2003). Thus, this determination must be made by the trial court upon remand. Accordingly, this case is remanded for proceedings consistent with this opinion.

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DAVID G. HAYES, JUDGE